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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,121	03/17/2004	Morton Beroza	0082.04	5292

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USDA, ARS, OTT
5601 SUNNYSIDE AVE
RM 4-1159
BELTSVILLE, MD 20705-5131

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/803,121

Applicant(s)

BEROZA, MORTON

Examiner

David J. Parsley

Art Unit

3643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 20 September 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 18-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


PETER M. POON
SUPERVISORY PATENT EXAMINER

9/27/06

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive in that the Grimes et al. reference US 1056535 does disclose a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container - at 10, 14, having a top surface, a bottom surface and side walls - see for example figure 2, having a composition of at least one volatile liquid attractant - at 11, for targeting at least one flying insect species, and a first opening - proximate 16 in the top of the container - see for example figure 2 to receive an adjustable wick - 16, frictionally inserted into the first opening of the container - see for example figure 2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission - see for example figure 2, and a second opening - proximate 14a, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid - see for example figure 2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant - see for example figures figure 2. Further, the Grimes et al. reference discloses hanging the device - see at 13 in figure 1. Further, the Grimes et al. reference discloses the wick - at 16, being adjustable in that the wick can be moved through the opening in the top of item - 14, as seen in figure 2 to adjust the depth of the wick inside the container - at 10 with the wick extending into a liquid as seen in figure 5. Further, the Grimes et al. reference discloses an attractant - at 11 being water, which is combined with a volatile composition - at 17 as seen in page 1 lines 34-84. Further, the Baker et al. reference US 6543181 is used to disclose a volatile attractant used for only one type of flying insect being a fruit fly - see column 2 lines 62-67 and column 3 lines 1-34. The Baker et al. reference is not used to disclose an adjustable wick frictionally inserted into a first opening of a container with portions of the wick being exposed to an atmosphere with the exposed wick area being increased or decreased over time to maintain a uniform rate of emission. The Grimes et al. reference is used to disclose these structural features. Therefore these arguments are moot. Further, the combination of the Grimes et al. and Baker et al. references would control the release rate of the volatile attractant by the absorption rate of the wick material - at 16 of Grimes et al. which would absorb the liquid at the rate for the particular material of the wick to allow the volatile composition to be exposed to insects. The device of Grimes et al. as modified by Baker et al. is capable of being operated for at least 6 months given the amount of liquid used and the absorption rate of the wick material. Further, the device of Grimes et al. as modified by Baker et al. discloses an open ended container as seen at the opening in the top of the container - at 14 as seen in figure 2 of Grimes et al.

The Huang reference US 6585990 discloses a volatile liquid attractant that is specific for one targeted flying insect species - see column 3 lines 39-48 where the targeted insect is houseflies. The Huang reference is not used to disclose an adjustable wick. The Grimes et al. reference is used to disclose the adjustable wick as seen above in this paragraph of this office action. The motivation to combine the Grimes et al. and the Huang references is deemed proper given the motivation to combine the references given in paragraph 2 of the office action dated 6-22-06 with the motivation to combine the references being found in the general knowledge of those of ordinary skill in the art.

Regarding claims 18, 21 and 23, the Kubalek reference US 2254948 discloses a frictionally adjustable wick - at 11 as seen in figure 2, which is held in place via frictional engagement with the lid - at 14 as seen in figure 2 and the wick - at 11 is adjustable in that the amount of the wick located inside and outside the container - at 16, can be manipulated and adjusted. Further, the Kubalek reference discloses the device can last indefinitely as seen in column 2 lines 34-37 and therefore can be made to operate for at least 6 months. Further, the device of Kubalek is open ended as seen - at the openings at 18-20 in figure 1. The combination of the Kubalek reference with either of the Baker et al. or Huang reference is deemed proper given the motivation to combine the references given in paragraph 2 of the office action dated 6-22-06 with the motivation to combine the references being found in the general knowledge of those of ordinary skill in the art.

Regarding the rejections of claim 20 using the Hurwitt reference US 2176345 applicant relies upon the same arguments set forth with respect to claims 18, 21 and 23 using the Grimes et al. reference in view of the Baker et al. reference or the Grimes et al. reference in view of the Huang reference. Therefore see the response to these references above in this paragraph of this office action. Further, the Hurwitt reference is used to disclose the opening and not the wick and relationship of the wick with respect to the volatile liquid and therefore these arguments are moot.